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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91195974
Party	Plaintiff Kosher First LLC d/b/a Tuv Taam
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Submission	Opposition/Response to Motion
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Date	09/21/2010
Attachments	Opposer's Memorandum in Opposition to Applicant's Motion to Dismiss.pdf ( 4 pages )(60383 bytes )

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Kosher First, LLC,	:	Opposition No. 91195974
	:	
	:	
Opposer,	:	
	:	
v.	:	
	:	
Tuv Taam, Inc.,	:	
	:	
Applicant.	:	
	:	
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## INTRODUCTION

## ARGUMENT

Moreover, Hartman & Craven LLP was retained by Opposer, Kosher First LLC,

as its counsel to represent it in this proceeding. Nothing could be more common than for a law firm, LLP or otherwise, to represent a client in a proceeding before the Trademark Trial and Appeal Board. It is expressly provided for by Trademark Rule of Practice; § 11.14 which states, in pertinent part: "(a) *Attorneys*. Any individual who is an attorney as defined in § 11.1 *may represent others* before the Office in trademark and other non-patent matters" (emphasis supplied). This is a trademark matter and the undersigned, who also signed the Notice of Opposition on her client's behalf, is a member of the bar of the State of New York and is duly authorized to represent Opposer in this matter.

As noted above, Applicant's MTD also is untimely, among its multitude of fatal flaws. The Federal Rules of Civil Procedure provide that a motion asserting any of the defenses enumerated in Rule 12(b), Fed.R.Civ.P., "must be made before pleading if a responsive pleading is allowed." To the extent Opposer can understand the basis of Applicant's MTD, it appears it may be based on Rule 12(b)(6) and by filing its Answer five days prior to filing the MTD, its Motion was not made before pleading and so was obviated by the earlier filed Answer. (If the present motion had been filed in federal court instead of before the Board, Opposer respectfully submits that Rule 11 sanctions, including an award to Opposer of its attorneys' fees in connection with answering the motion, would have been appropriate.)

Finally, Opposer also wishes to inform the Board that Opposer's Notice of Service, both in connection with the MTD and its earlier filed Answer, falsely represented that copies of the pleadings were "prepared for mailing/mailed to Opposers stated "counsel/attorney" at its address of record." Neither document was ever received by Opposer's counsel by any means, either by U.S. Mail or e-mail, and Opposer became aware that the Answer (due September 18) and the instant MTD were filed only when it received the September 10, 2010 communication from the Board advising that the "[p]roceeding ... [had been] suspended pending disposition of applicant's motion to dismiss (filed September 7, 2010)." Although Applicant may be permitted to represent itself in this proceeding by its officer(s), it should be required to respect and follow the Rules of Practice.

In that regard, Opposer notes the Board's observation in *S Industries, Inc. et al. v. Casablanca Industries, Inc.*, Cancellation No. 24,330, that "Corporations (and other business entities) [may] appear without counsel as a privilege extended by the Patent and Trademark Office Rule 10.14(e)<sup>1</sup>." Opposer respectfully submits that by filing the instant "Motion" in its unsupported form, replete with misspellings and careless errors of fact, and

failing to provide its counsel with a service copy of such filing, Applicant has sorely abused that privilege.

**CONCLUSION**

For the foregoing reasons, Opposer, by and through its undersigned counsel, respectfully requests that Applicant's "Motion to Diissmiss [sic] or Strike" be denied in its entirety and the proceeding restored to the Board's active docket with deadlines reset accordingly.

Respectfully submitted,

HARTMAN & CRAVEN LLP  
*Attorneys for Opposer*

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<sup>1</sup> *Sic*; this apparently is a typographical error as the rule actually is 11.14(e)(3).

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing OPPOSER'S MEMORANDUM IN OPPOSITION TO APPLICANT'S MOTION TO DISMISS OR STRIKE was served by first class mail, postage prepaid, upon Applicant, Tuv Taam, Inc., 719 Eastern Parkway, Suite 3, Brooklyn, New York 11213, this 21<sup>st</sup> day of September, 2010.

/s/Marsha G. Ajhar

Marsha G. Ajhar